

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 23, “Emission Standards for Contaminants,” Chapter 24, “Excess Emission,” and Chapter 28, “Ambient Air Quality Standards,” Iowa Administrative Code.

The primary purpose of the proposed amendments is to update state air quality rules by adopting new federal requirements, including adoption of new national ambient air quality standards (NAAQS) and adoption of new federal air toxics standards. The proposed amendments also provide the option to submit initial excess emission reports by E-mail.

Item 1 amends the introductory paragraph of subrule 23.1(2), the provisions that adopt by reference the federal new source performance standards (NSPS) contained in 40 CFR Part 60. The NSPS program requires new and existing facilities in a particular industry sector that construct and operate specific equipment to meet uniform standards for air pollutant emissions. NSPS requirements vary depending on the processes, activities or equipment being regulated, and whether the processes, activities or equipment is considered to be new or existing.

This amendment adopts by reference federal amendments to two existing new source performance standards. EPA promulgated amendments to an additional NSPS that the Department is not proposing to adopt, as explained in more detail below.

On April 28, 2009, EPA finalized amendments to the NSPS for nonmetallic mineral processing plants (Subpart OOO). This NSPS affects facilities such as aggregate processing plants or concrete batch plants which commence construction, modification, or reconstruction on or after April 22, 2008. These amendments include new emission limits, additional testing and monitoring requirements, changes to simplify the notification requirements for all affected facilities, changes to definitions, and various clarifications.

The Department estimates that approximately 200 portable and fixed plants are subject to the original NSPS Subpart OOO requirements. However, these facilities are only subject to the requirements in the new federal amendments if the facilities commenced construction, modification or reconstruction after April 22, 2008. The Department is aware of only a few facilities that are affected by the new NSPS requirements at this time. More facilities may become subject to the new requirements in the future. The Department is working with individual facilities regarding the new Subpart OOO requirements as facilities submit permit applications for construction, modification, or reconstruction.

On October 8, 2009, EPA finalized amendments to the NSPS coal preparation and processing plants (40 CFR 60 Subpart Y). This NSPS affects facilities that prepare and process coal, such as electric utilities and industrial operations. The federal amendments include revisions to the emission limits for particulate matter and opacity standards for thermal dryers, pneumatic coal cleaning equipment, and coal handling equipment. The revised limits apply to affected facilities that commence construction, modification, or reconstruction on or after April 28, 2008. The federal amendments also establish a sulfur dioxide (SO₂) emission limit and a combined nitrogen oxide (NO_x) and carbon monoxide (CO) emissions limit for thermal dryers. In addition, the federal amendments establish work practice standards to control fugitive coal dust emissions from open storage piles. The SO₂ limit, the NO_x/CO limit, and the work practice standards apply to affected facilities that commence construction, modification, or reconstruction on or after May 27, 2009.

The Department estimates that approximately 50 facilities are subject to the original Subpart Y requirements. However, only facilities that undergo construction, modification or reconstruction on or after the dates noted above are subject to the new requirements. At this time, the Department has identified only a few facilities that are affected by the new NSPS requirements. More facilities may be subject to the new requirements in the future. The Department is working with individual facilities that may be subject to the new Subpart Y requirements as facilities submit permit applications for construction, modification, or reconstruction.

On October 6, 2009, EPA amended the NSPS and emission guidelines for new hospital and medical waste incinerators (HMIWI) (Subparts Ce and Ec). The Department is not adopting these new federal amendments because Iowa no longer has any operating incinerators affected under HMIWI, and the Department anticipates that no new HMIWI will be constructed in Iowa. Many HMIWI throughout the United States have shut down because less expensive alternative waste disposal options are available. The Department is not required to adopt federal NSPS for which there are no affected facilities and for which there are no affected facilities reasonably expected to exist in the future. If a new HMIWI does locate in Iowa or if a currently exempt facility changes operations to become a newly affected facility, federal NSPS for HMIWI will still apply. At such time, the Department will determine if it is appropriate to adopt the federal NSPS regulations for HMIWI into state rules. The Department is taking additional rule-making action regarding the currently adopted HMIWI regulations, as explained under Item 3 and Item 6.

Item 2 amends paragraph 23.1(2)“sss” to revise the explanation accompanying the adoption by reference of the NSPS for municipal waste combustors (Subpart Eb). When the Department adopted EPA’s 2006 amendments to this NSPS through a prior rule making, the Department did not at that time modify the explanatory text to be consistent with the federal amendments. The Department is now proposing to modify the text so that it is identical to the current federal regulations.

Item 3 amends paragraph 23.1(2)“ttt” to add a note rescinding adoption by reference of the federal NSPS regulations for HMIWI (Subpart Ec). As explained above, the state does not have any HMIWI affected under NSPS Subpart Ec, and does not expect to have any affected HMIWI in the future.

Item 4 amends the introductory paragraph of subrule 23.1(4), the emission standards for hazardous air pollutants for source categories, also known as national emission standards for hazardous air pollutants or NESHAP, to adopt recent amendments that EPA made to 40 CFR Part 63. The NESHAP program requires facilities in a particular industry sector that construct and operate specific equipment to meet uniform standards for hazardous air pollutants (HAP). NESHAP requirements for source sectors vary depending on the processes, activities or equipment being regulated.

The NESHAP affect both new and existing major sources and area sources. Area sources are usually smaller commercial or industrial operations. Specifically, area sources have potential emissions less than 10 tons per year (tpy) of any single hazardous air pollutant (HAP) and less than 25 tpy of any combination of HAP and are classified as minor sources for HAP. Facilities that have potential HAP emissions greater than or equal to these levels are classified as major sources. HAP are sometimes also known as “air toxics.”

This rule making includes adoption of new or amended NESHAP potentially impacting some facilities or businesses that previously had few, if any, air quality requirements. Because of the potential impacts to small businesses and previously unregulated facilities, the Department is developing implementation strategies in conjunction with this proposed rule making. The strategies include cooperative efforts with the University of Northern Iowa, Iowa Air Emissions Assistance Program (UNI); Iowa Department of Economic Development (IDED); the Linn County and Polk County local air quality programs; and other interested associations and organizations to provide outreach and compliance assistance to stakeholders.

The Department’s outreach strategy will be specific to each rule and will depend on a number of factors, including: the estimated number of facilities and small businesses affected, the compliance date of the rule, the requirements of the rule (such as emissions control, work practices standards, etc.), and current level of air quality knowledge (such as air permits or active industry associations). As Department resources allow, outreach may include informational meetings, workshops, fact sheets, guides, and Internet-based tools. It is hoped that this rule making, in conjunction with current and

future efforts of the Department and its compliance assistance partners, will result in reductions in air toxic and other air pollutant emissions, while minimizing the regulatory burden to small businesses and other affected facilities.

On March 3, 2010, EPA amended the NESHAP for reciprocating internal combustion engines (RICE) (Subpart ZZZZ) to include requirements to control HAP emissions from certain engines that were not previously covered under the NESHAP. The federal amendments apply to stationary existing diesel engines located at both area sources and major sources that meet specific siting, age and size criteria. In general, existing emergency engines are subject to work practice and management standards. Some larger existing engines and existing nonemergency engines are subject to emission standards, control requirements and compliance testing requirements. Affected facilities have until May 3, 2013, to comply with the new NESHAP requirements.

Existing emergency engines located at area source residential, commercial or institutional facilities are not subject to the NESHAP. Additionally, the federal amendments do not address existing stationary spark ignition (SI) engines, such as gasoline-powered engines. EPA intends to address these SI engines in a later rule making.

The Department estimates that thousands of existing stationary diesel engines may be affected by the NESHAP. However, many of these engines will be subject only to work practice or management standards, such as regular oil changes. The Department expects that owners and operators of engines that will require add-on control or emissions testing will elect to change-out their engines for new, cleaner engines that are manufacturer-certified to meet EPA emissions specifications. Since the NESHAP compliance date is not until May 2013, the Department and its compliance assistance partners will begin working with interested stakeholders in the next one to two years to better characterize the affected facilities and to develop appropriate outreach and compliance assistance strategies.

Items 5, 6 and 7 amend subrule 23.1(4) by adopting new paragraphs “ev,” “fa,” “fb,” “fc,” and “fd” to adopt by reference new NESHAP for new and existing area sources. The Department is proposing to adopt by reference three newly promulgated NESHAP for area sources, as explained in more detail below.

On October 29, 2009, EPA finalized the area source NESHAP for chemical manufacturing (Subpart VVVVVV). This NESHAP affects area sources under several chemical manufacturing sectors, including pharmaceutical production, agricultural chemicals and pesticides manufacturing, and organic chemical manufacturing, that emit one or more of 15 specific HAP. The NESHAP includes management practices and, in some cases, add-on control, to reduce emissions from process vessels, storage tanks, transfer racks, heat exchange systems and wastewater. Existing facilities have until October 29, 2012, to be in compliance with the NESHAP.

The Department estimates that there may be up to 100 facilities subject to this NESHAP. However, many facilities may not be emitting the affected HAP in regulated quantities or may elect to discontinue use prior to the NESHAP compliance date. Many other facilities are already following management practices under other federal standards that are identical or similar to the NESHAP requirements. In the near term, the Department expects to work individually with facilities on NESHAP applicability, particularly as these facilities submit permit applications for review. Over the next six months, the Department and its compliance assistance partners will determine if a more extensive NESHAP outreach strategy is appropriate.

On December 3, 2009, EPA finalized the area source NESHAP for paint and allied products manufacturing (Subpart CCCCCC). This NESHAP affects area sources that manufacture paint, ink or adhesive and that process, use, or generate materials containing chromium, lead, nickel or cadmium, benzene or methyl chloride. Affected facilities are required to operate particulate control equipment to control metal air toxics and must use management practices to control volatile air toxic emissions. Existing facilities have until December 3, 2012, to comply with the NESHAP requirements.

Currently, the Department estimates that 50 facilities may be subject to this NESHAP. However, many facilities may not use, or may elect to discontinue use of, the affected HAP before the NESHAP compliance date. In the near term, the Department expects to work individually with facilities on NESHAP applicability, particularly as these facilities submit permit applications for review. Over the

next year, the Department and its compliance assistance partners will determine if a more extensive NESHAP outreach strategy is appropriate.

On January 5, 2010, EPA finalized the area source NESHAP for prepared feeds manufacturing (Subpart DDDDDDD). This NESHAP affects area sources that produce animal feed products and use materials that contain chromium or manganese. Affected facilities must apply management practices in the area of the facility where materials containing chromium or manganese are stored, used or handled. Facilities that produce more than 50 tons per day of feed will also be required to operate control equipment to reduce chromium and manganese emissions from pelleting and pelleting cooling operations. Existing facilities will have until January 5, 2012, to comply with the NESHAP requirements.

The Department estimates that approximately 200 feed mills are currently operating in the state. However, it is expected that many feed mills do not use chromium or manganese materials at the levels regulated by the NESHAP, or will qualify for one of the other exemptions in the NESHAP. Of facilities that are affected, it is expected that many will be subject to only the management practices, which include activities to minimize dust. Over the next year, the Department and its compliance assistance partners will be working closely with interested stakeholders to better characterize the affected facilities and to develop appropriate outreach and compliance assistance strategies.

The Department is not proposing to adopt two other recently promulgated area source NESHAP, the NESHAP for asphalt processing and asphalt roofing manufacturing (Subpart AAAAAAA) and the NESHAP for chemical preparation (Subpart BBBB BBB). Iowa does not have any facilities subject to these NESHAP and is unlikely to have any subject facilities in the future.

Items 8 and 9 amend paragraph 23.1(5)“b” to rescind the emission guidelines for existing HMIWI. EPA originally promulgated emission guidelines for existing HMIWI in 1997 and the Department adopted these emission guidelines in 1998. At that time, Iowa had two operating HMIWI affected under the emission guidelines. These two HMIWI have since shut down.

The Department is proposing to rescind the existing emission guidelines because the Department is not required to retain federal emission guidelines for which the state has no subject facilities, and for which the Department can reasonably expect not to have any subject facilities in the future. If a currently exempt facility changes operations to become an affected HMIWI, federal standards for existing HMIWI will apply. At such time, the Department will determine if it is appropriate to adopt into state rules the federal emission guidelines for existing HMIWI.

Item 10 amends subrule 24.1(2), the requirements for oral reporting of excess emissions. The proposed amendment changes the description in this subrule to “initial report of excess emissions” and also adds the option for the owner or operator to submit the required excess emissions information to the Department by electronic mail (E-mail).

In some cases, E-mail will be a more accurate and efficient method for owners and operators to provide these reports. Additionally, Department field staff will be able to receive the report in the field through mobile electronic devices. E-mail reporting will eliminate Department staff time in transcribing the initial report and will enable staff to more efficiently input the information into reports and databases. Since E-mail may not be available or convenient in all cases, owners and operators will still be allowed to make an initial report of excess emissions in person or by telephone.

Owners and operators must still follow up their initial excess emissions report with a written, hard-copy report. The Department is not proposing an E-mail option for written excess emissions reporting at this time due to EPA’s requirements under the federal cross-media electronic reporting rule (CROMERR). CROMERR requires special electronic verification that the Department has not yet established for excess emissions reports. The Department hopes to provide an electronic option for these reports in the future.

Item 11 amends subrule 24.1(3), the provisions for a written report of excess emissions. The proposed amendment changes the term “oral” report to “initial” report to be consistent with the proposed amendment described in Item 10. The Department is not proposing an E-mail option for written excess emissions reporting at this time due to EPA’s requirements under CROMERR. CROMERR requires special electronic verification that the Department has not yet established for excess emissions reports.

Item 12 amends rule 567—28.1(455B) to adopt by reference new national ambient air quality standards (NAAQS). On February 9, 2010, EPA strengthened the NAAQS for nitrogen dioxide (NO₂) by adding a new 1-hour standard to more adequately protect public health and welfare. EPA set the new 1-hour NO₂ standard at the level of 100 parts per billion (ppb). In addition to establishing an averaging time and level, EPA also set a new “form” for the standard. The form is the air quality statistic used to determine if an area meets the standard. The form for the 1-hour NO₂ standard is the 3-year average of the 98th percentile of the annual distribution of daily maximum 1-hour average concentrations. EPA retained, with no change, the current annual average NO₂ standard of 53 ppb.

EPA expects to designate areas as attaining or not attaining the new standard by January 2012 using NO₂ monitoring data from the current community-wide monitoring network. Once the expanded network of NO₂ monitors required under the new standard is fully deployed and three years of data have been collected, EPA intends to redesignate areas in 2016 or 2017, as appropriate, based on the air quality data from the new monitoring network. The Department will need to complete and submit revisions to the state implementation plan (SIP) for NO₂ by January 2013. The SIP revision will include any rule changes necessary to implement the new standard.

Any person may make written suggestions or comments on the proposed amendments on or before July 20, 2010. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324; fax (515)242-5094; or by E-mail to christine.paulson@dnr.iowa.gov.

A public hearing will be held on Monday, July 19, 2010, at 1 p.m. in the conference rooms at the Department’s Air Quality Bureau office located at 7900 Hickman Road, Windsor Heights, Iowa. At the public hearing, comments on the proposed amendments may be submitted orally or in writing. All comments must be received no later than Tuesday, July 20, 2010.

Any person who intends to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact Christine Paulson at (515)242-5154 to advise of any specific needs.

These amendments are intended to implement Iowa Code section 455B.133.

The following amendments are proposed.

ITEM 1. Amend subrule 23.1(2), introductory paragraph, as follows:

23.1(2) *New source performance standards.* The federal standards of performance for new stationary sources, as defined in 40 Code of Federal Regulations Part 60 as amended or corrected through ~~March 20, 2009~~, October 8, 2009, are adopted by reference, except § 60.530 through § 60.539b (Part 60, Subpart AAA), and shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

ITEM 2. Amend paragraph **23.1(2)“sss”** as follows:

sss. Municipal waste combustors. Unless exempted, a municipal waste combustor with a combustion capacity greater than 35 megagrams 250 tons per day of municipal solid waste for which construction, modification or reconstruction is completed commenced after September 20, 1994, ~~or for which modification or reconstruction is commenced after June 19, 1996.~~ (Subpart Eb)

ITEM 3. Amend paragraph **23.1(2)“ttt”** as follows:

ttt. Hospital/medical/infectious waste incinerators. Unless exempted, a hospital/medical/infectious waste incinerator for which construction is commenced after June 20, 1996, or for which modification is commenced after March 16, 1998. (Subpart Ec)*

*As of [insert effective date of these amendments], the adoption by reference of Part 60 Subpart Ec is rescinded.

ITEM 4. Amend subrule 23.1(4), introductory paragraph, as follows:

23.1(4) *Emission standards for hazardous air pollutants for source categories.* The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through ~~December 22, 2008,~~ March 3, 2010, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in parentheses. An earlier date for adoption by reference may be included with the subpart designation in parentheses. 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (F_{bio}) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purposes of this subrule, “hazardous air pollutant” has the same meaning found in 567—22.100(455B). For the purposes of this subrule, a “major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an “area source” means any stationary source of hazardous air pollutants that is not a “major source” as defined in this subrule. Paragraph 23.1(4) “a,” general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below.

ITEM 5. Adopt the following new paragraph **23.1(4)“ev”**:

ev. Emission standards for hazardous air pollutants for area sources: chemical manufacturing. This standard applies to chemical manufacturing at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart VVVVVV)

ITEM 6. Reserve paragraphs **23.1(4)“fa”** and **“fb.”**

ITEM 7. Adopt the following new paragraphs **23.1(4)“fc”** and **“fd”**:

fc. Emission standards for hazardous air pollutants for area sources: paint and allied products manufacturing. This standard applies to paint and allied products manufacturing at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart CCCCCC)

fd. Emission standards for hazardous air pollutants for area sources: prepared feeds manufacturing. This standard applies to prepared feeds manufacturing that produces animal feed products (not including feed for cats or dogs) and uses chromium or manganese compounds at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart DDDDDDD)

ITEM 8. Amend paragraph **23.1(5)“b,”** introductory paragraph, as follows:

b. Emission guidelines for hospital/medical/infectious waste incinerators (Subpart Ce). This paragraph contains emission guidelines and compliance times for the control of certain designated pollutants from hospital/medical/infectious waste incinerator(s) (HMIWI) in accordance with Subparts Ce and Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators) of 40 CFR Part 60.*

*As of [insert effective date of these amendments], the emission guidelines for hospital/medical/infectious waste incinerators (Subpart Ce) are rescinded.

ITEM 9. Rescind subparagraphs **23.1(5)“b”(1) to (13).**

ITEM 10. Amend subrule 24.1(2) as follows:

24.1(2) *Oral Initial report of excess emissions emission.* An incident of excess emission (other than an incident of excess emission during a period of startup, shutdown, or cleaning) shall be reported to the appropriate regional office of the department within eight hours of, or at the start of the first working day following the onset of the incident. The reporting exemption for an incident of excess emission

during startup, shutdown or cleaning does not relieve the owner or operator of a source with continuous monitoring equipment of the obligation of submitting reports required in 567—subrule 25.1(6).

An ~~oral~~ initial report of excess emission is not required for a source with operational continuous monitoring equipment (as specified in 567—subrule 25.1(1)) if the incident of excess emission continues for less than 30 minutes and does not exceed the applicable emission standard by more than 10 percent or the applicable visible emission standard by more than 10 percent opacity.

The ~~oral~~ initial report ~~may~~ shall be made by electronic mail (E-mail), in person, or by telephone and shall include as a minimum the following:

a. to f. No change.

ITEM 11. Amend subrule 24.1(3) as follows:

24.1(3) *Written report of excess emission.* A written report of an incident of excess emission shall be submitted as a follow-up to all required ~~oral~~ initial reports to the department within seven days of the onset of the upset condition, and shall include as a minimum the following:

a. to g. No change.

ITEM 12. Amend rule 567—28.1(455B) as follows:

567—28.1(455B) Statewide standards. The state of Iowa ambient air quality standards shall be the National Primary and Secondary Ambient Air Quality Standards as published in 40 Code of Federal Regulations Part 50 (1972) and as amended at 38 Federal Register 22384 (September 14, 1973), 43 Federal Register 46258 (October 5, 1978), 44 Federal Register 8202, 8220 (February 9, 1979), 52 Federal Register 24634-24669 (July 1, 1987), 62 Federal Register 38651-38760, 38855-38896 (July 18, 1997), 71 Federal Register 61144-61233 (October 17, 2006), 73 Federal Register 16436-16514 (March 27, 2008), ~~and~~ 73 Federal Register 66964-67062 (November 12, 2008), and 75 Federal Register 6474-6537 (February 9, 2010), except that the annual PM₁₀ standard specified in 40 CFR Section 50.6(b) shall continue to be applied for purposes of implementation of new source permitting provisions in 567 IAC Chapters 22 and 33. The department shall implement these rules in a time frame and schedule consistent with implementation schedules in federal laws, regulations and guidance documents.

This rule is intended to implement Iowa Code section 455B.133.